UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHADWICK DAVID MYERS,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 30321-13 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	

ORDER AND DECISION

This case was commenced in response to a Notice of Determination Concerning Collection Action(s) Under Section 6230[1] and/or 6330, sustaining respondent's Notice of Intent to Levy and Notice of Federal Tax Lien (NFTL) to collect petitioner's unpaid Federal income tax liabilities for 2003, 2004, 2005, 2006, 2007, 2008, and 2009.

This case is calendared for trial at the Court's June 22, 2015, Richmond, Virginia (Charlottesville, VA) trial session. On March 12, 2015, respondent filed a Motion for Summary Judgment and a supporting Declaration of Settlement Officer Robert Carbaugh. By Order dated March 18, 2015, petitioner was ordered to respond to the motion by April 10, 2015, and advised that if he continued to make frivolous or groundless arguments, the Court may impose against him a section 6673 penalty. On April 15, 2015, petitioner filed (1) an Objection to the Motion for Summary Judgment, (2) a Motion to Take Judicial Notice of the Law in the Decision of the United States Supreme Court in Stanton v. Baltic Mining Co., and (3) a Motion to Take Judicial Notice of the Law in the Decision of the United States Supreme Court in Brushaber v. Union Pacific R. Co. On May 18, 2015, respondent filed a Motion for Continuance.

[1] Unless otherwise indicated all section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the internet at www.ustaxcourt.gov

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Rule 121(b) provides in part that after a motion for summary judgment and opposing response are filed: "A decision shall thereafter be rendered if the pleadings * * * and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).

We have reviewed respondent's motion and the documents submitted in support of respondent's motion and we have considered petitioner's response. We incorporate in this order by reference the statement of facts contained in the Declaration of Mr. Carbaugh. We are satisfied that the material facts are not in dispute, and for the reasons summarized below, respondent is entitled to a decision sustaining both the filing of the NFTL and the proposed levy.

Summary judgment is particularly appropriate here because petitioner does not raise any bona fide issue with respect to the Appeals hearing but continues to make only frivolous arguments, as explained further below. A trial would give petitioner another occasion to pursue frivolous arguments and achieve delay which in turn would serve only to increase the amount of penalty to be imposed under section 6673.

Background

On August 1, 2013, respondent sent a Notice of Intent to Levy and a Notice of Your Right to a Hearing to petitioner with respect to petitioner's unpaid Federal income tax liabilities for years 2003, 2004, 2005, 2006, 2007, 2008, and 2009. On August 15, 2013, respondent sent a Notice of Federal Tax Lien and a Notice of Your Right to a Hearing under section 6320 to petitioner with respect to petitioner's unpaid Federal income tax liabilities for years 2003, 2004, 2005, 2006, 2007, 2008, and 2009. In response, on August 30, 2013, petitioner mailed to respondent a Form 12153, Request for a Collection Due Process (CDP) or Equivalent Hearing. Petitioner based his challenge to the collection actions on his assertion that he could not find any statute imposing liability for income tax on him.

On September 13, 2013, the settlement officer mailed petitioner a letter scheduling a telephonic hearing for October 16, 2013. The settlement officer notified petitioner that petitioner raised frivolous arguments in his request for

hearing and that the Tax Court has the authority to impose a monetary sanction of up to $25,000 for making frivolous or groundless arguments in any case brought to review respondent's notice of determination. The settlement officer also advised petitioner that he would not receive a face-to-face hearing unless he withdrew the frivolous arguments within 30 days of the letter, filed income tax returns for 2010, 2011, and 2012, and provided financial information.

On September 20, 2013, petitioner mailed the settlement officer a letter requesting a face-to-face hearing and stated he would withdraw any frivolous arguments if respondent identified them in writing and if respondent provided statutory language that made him liable for Federal income tax.

On October 22, 2013, the settlement officer mailed a letter to petitioner informing him the telephonic hearing had been moved to November 5, 2013, due to the government shut down. Attached to the letter was the Internal Revenue Service Notice 2008-14 listing arguments previously determined to be frivolous.

On November 1, 2013, petitioner mailed the settlement officer a letter requesting the telephonic hearing be moved to November 12, 2013. Petitioner reiterated that he was not making any frivolous arguments and wanted a face-to-face hearing. In a telephone call on the same day, petitioner and the settlement officer agreed to have the telephonic hearing on November 8, 2015.

In the telephonic hearing on November 8, 2013, petitioner asked what laws made him liable to pay Federal income taxes or required him to file signed income tax returns. On November 26, 2013, as noted above, the settlement officer issued the notice of determination at issue here sustaining the collection actions.

Discussion

Petitioner disagrees with respondent's notice of determination because he contends that he "is clearly not the specific 'person' who is plainly and clearly made liable by the written statutes of Title 26 United States Code (Code) for the payment of [F]ederal personal income tax." In one of his submission to the settlement officer, petitioner cites a long list of Code provisions, but he persists in ignoring the provisions that make him "plainly and clearly" liable for Federal income tax in favor of contentions that courts have universally rejected. See secs. 1, 61(a)(1), 6012(a), 6020, 7701(a)(1) and (14); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form

of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable.").

We do not address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." See Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984); Rowlee v. Commissioner, 80 T.C. 1111, 1120 (1983) (rejecting taxpayer's claim that he is not a "person liable" for tax); Ebert v. Commissioner, T.C. Memo. 1991-629 (rejecting taxpayer's assertion that there is no section of the Internal Revenue Code that makes a taxpayer liable for the taxes claimed), aff'd without published opinion, 986 F.2d 1427 (10th Cir. 1993). Because petitioner did not challenge the underlying liability in his hearing, except through frivolous arguments, petitioner may not raise that issue here. See Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493-494 (2002).

Further, the express language of section 6330(c)(2)(B) bars petitioner from challenging the underlying tax liability because he previously received notices of deficiency for all of the years at issue (2003-2009) and had a prior opportunity to dispute that liability. In his petition in this case, petitioner sought to challenge those notices of deficiency and attached them to his petition. On February 25, 2014, respondent filed a motion to dismiss so much of the case as related to the notices of deficiency because the petition was untimely as to those notices and therefore the Court lacked jurisdiction. In his Reply to respondent's motion, filed March 24, 2014, petitioner did not dispute that his petition was not filed within the time prescribed for challenging those notices. By order dated March 25, 2014, the Court granted respondent's motion.

Therefore, the sole issue for decision is whether it was an abuse of discretion for respondent to proceed with the collection by levy and the filing of a lien with respect to petitioner's unpaid income tax liabilities for years 2003-2009. See Lunsford v. Commissioner, 117 T.C. 183, 185 (2001).

Aside from his frivolous arguments, petitioner only challenges the form of the Appeals hearing. But those challenges are doomed by his frivolous arguments and his failure to comply with his filing obligations. First, the Commissioner need not provide a face-to-face hearing when a taxpayer has raised frivolous arguments and is not up to date on his tax return filings. Sec. 301.6330-1(d)(2) Q&A-D8, Proceed. & Admin. Regs.; see Toth v. Commissioner, T.C. Memo. 2010-227 ("there is no abuse of discretion in the IRS' refusal of a face-to-face hearing when

a taxpayer refuses to present nonfrivolous arguments, file past due returns, and submit financial statements."); see also Boulware v. Commissioner, T.C. Memo. 2014-80 (reaffirming that a taxpayer is not automatically entitled to a face-to-face hearing).

Nor did petitioner have a right to record his telephonic hearing. Sections 6320 and 6330 do not require an "on the record" hearing. See Tucker v. Commissioner, 135 T.C. 114, 152 (2010); Davis v. Commissioner, 115 T.C. 35, 41-42 (citing sec. 601.106(c), Statement of Procedural Rules). And we have never applied our holding in Keene v. Commissioner, 121 T.C. 8 (2003), that a taxpayer is entitled to audio record his section 6330 hearing, to anything other than a face-to-face meeting. See Califati v. Commissioner, 127 T.C. 219, 228 (2006). We will not do so here particularly in light of petitioner's failure to raise any nonfrivolous argument against respondent's collection actions.

Petitioner has not advanced any argument or identified any evidence that would allow us to conclude that the determination to sustain the collection actions was arbitrary, capricious, or without sound basis in fact or in law. Petitioner did not submit a Form 433-A or any other financial information during the hearing, nor did he offer any reasonable collection alternative. Accordingly, we hold that respondent did not abuse his discretion in sustaining the collection actions.

As to respondent's motion to impose a penalty under section 6673, as noted above, in our March 18, 2015, Order, we warned petitioner that his arguments appeared frivolous and that he risked a penalty if he continued to make them. Notwithstanding that warning, petitioner persisted in making the same arguments in opposition to respondent's summary judgment motion. His opposition to respondent's motion for a penalty under section 6673 further demonstrates to the Court that petitioner does not seek to understand his responsibilities under the tax laws but seeks to thwart those laws. We are satisfied that his position regarding his alleged nontaxable status is frivolous and groundless. A penalty in the amount of $5,000 therefore is appropriate. Wnuck v. Commissioner, 136 T.C. 498, 513-514 (2011).

Petitioner is advised that if he persists with these arguments in other cases before this Court, the penalty may be increased up to the statutory maximum of $25,000. In this regard, we note that petitioner has another case pending before the Court at docket no. 29983-14 in which he makes the same frivolous assertions.

Conclusion

Based on a review of the administrative record and notice of determination the Court concludes that the settlement officer satisfied the verification requirements under sections 6320 and 6330, that there is no genuine dispute as to any material fact, and that a decision may be rendered as a matter of law. Therefore, summary judgment in favor of respondent is appropriate. Upon due consideration of the foregoing, it is

ORDERED that respondent's Motion for Summary Judgment and to Impose a Penalty Under I.R.C. § 6673, filed March 12, 2015, is granted. It is further

ORDERED that respondent's Motion for Continuance filed May 18, 2015, is denied as moot. It is further

ORDERED that petitioner's Motion to Take Judicial Notice of the Law in the Decision of the United States Supreme Court in Stanton v. Baltic Mining Co., is denied. It is further

ORDERED that petitioner's Motion to Take Judicial Notice of the Law in the Decision of the United States Supreme Court in Brushaber v. Union Pacific R. Co. is denied. It is further

ORDERED AND DECIDED that the determinations set forth in the Notice of Determination Concerning Collection Action(s), Under Section 6320 and/or 6330, dated November 26, 2013, for petitioner's unpaid Federal income tax liabilities for 2003, 2004, 2005, 2006, 2007, 2008, and 2009, and upon which this case is based, are sustained in full. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty under section 6673 in the amount of $5,000.

(Signed) Cary Douglas Pugh
Judge

ENTERED: **MAY 28 2015**